

## Mediation Training Curriculum Guidelines

Under Part 146.5 of the Rules of the Chief Administrative Judge

- I. Overview: Pursuant to Part 146 of the Rules of the Chief Administrative Judge, mediators who wish to serve on court rosters must have taken at least 40 hours of mediation training and must have recent experience mediating actual cases. The 40 hours of mediation training may consist of 24 hours of initial training, and 16 hours of additional mediation skills training, grounded in the court and case type-specific context in which the trainees will mediate. Alternatively, the 40 hours may be offered together as one complete program covering the necessary topics depending on the court and case type-specific context in which the trainees will mediate. The 24-hour, 16-hour or 40-hour-combined training shall afford appropriate opportunities for experiential learning, and shall include a mixture of lecture, exercises, small group activities, mediation simulation, and role plays.
- II. The training agenda and materials for the **initial training (24 hours)** should cover these topics:
  - A. **Definition and discussion of ADR processes.** The training should define and distinguish among various dispute resolution processes, which may include negotiation, mediation, case conferencing, collaborative law, parenting coordination, neutral evaluation, arbitration, and litigation.
  - B. **Definition and discussion of the nature of conflict.** The training should explore the nature of conflict, define and distinguish among the various conflict management approaches (e.g., competitive v. collaborative) and discuss how these approaches influence the resolution of conflict.
  - C. **Discussion of the values and purposes underlying mediation:** The training should cover the values and purposes underlying mediation, including voluntariness, party self-determination, safety, confidentiality (and its exceptions), mediator impartiality, informed decision-making, empowerment and recognition.
  - D. **Definition and discussion of the mediation process.** The training should cover the process of mediation including but not limited to (i) pre-mediation steps, (ii) the opening statement, (iii) information gathering and exchange (iv) identifying the issues and developing the agenda, (v) facilitating movement and exploring options, and (vi) reaching closure or agreement. The training should highlight the flexibility and non-linear nature of the mediation process notwithstanding a structured teaching approach that may include the above stages.
  - E. **Mediation Skills.** The training should cover mediation skills including but not limited to: active listening, forms of questions (e.g., open-ended v. closed-ended), distinguishing positions from interests, reflecting or summarizing, framing issues, responding to emotions, generating options, reality-testing proposals, bridging impasse, and drafting agreement.
  - F. **Role of the mediator, parties, support persons, lawyers, interpreters, and other foreseeable participants.** The training should prepare mediators to facilitate communication and efficiently maximize participation of all foreseeable parties in mediation. The training should discuss the role of lawyers in advising clients and drafting agreements.

- G. **Identifying and responding to power imbalances.** The training should help trainees to identify power imbalances that may make mediation inappropriate and provide them with skills to bring mediation to closure safely when necessary.
  - H. **Identifying and responding to different values, cultural norms, and biases.** The training should raise awareness of the trainees' own attitudes and explicit and implicit biases and provide them with the skills to respond sensitively to the different values, cultural norms and biases of the parties consistent with the underlying purposes and values of mediation.
  - I. **Ethical issues and codes of conduct.** The training should highlight ethical issues that may arise in the areas including party self-determination, mediator impartiality, mediator competence, confidentiality and its exceptions, conflicts of interest, and the quality of the mediation process.
    - 1. The training should also cover the role of law in mediation, and the risks to the integrity of the mediation process when mediators make proposals, evaluate solutions, or draft agreements for parties.
    - 2. Trainees should learn about sources of ethical standards for mediators (e.g., NYS UCS Standards of Conduct for Mediators in Court-Referred ADR, Model Standards of Conduct for Mediators, Model Standards of Practice for Family and Divorce Mediation) and where to go to for guidance.
    - 3. Trainees who are members of other professions should be reminded to consult their profession's applicable codes of professional responsibility for provisions that may apply when they serve as mediators.
    - 4. Trainees should learn how guiding ethical principles apply to online practice.
  - J. **The training should prepare trainees to mediate in-person as well as online.** To prepare mediators to mediate online, the following considerations must be addressed in the training:
    - 1. Address ways to prepare as a mediator for online mediation. This should include revising forms as necessary to address virtual participation (consent to mediate, informed consent, how to gather necessary signatures or e-signatures, and post-session participant satisfaction survey questions to include feedback on technological aspects of the session); comfort in using the online platform and handling glitches that may arise; how to build trust in a virtual setting; use of online tools to enhance the process (e.g., whiteboard, document sharing, breakouts\rooms).
    - 2. Address ways to prepare the parties and other third-party participants for online mediation. This should include conducting pre-mediation discussions regarding technology access, party safety, privacy (other people in the room, taping the session), confidentiality, secure WiFi, sharing and storing documents, and protocols in case of technology failure or need to privately communicate with the mediator.
- III. The training agenda and material for the **additional 16 hours of mediation skills training** should cover these topics:
- A. **Court procedures and applicable laws.** The training should cover the specific court rules governing the operation of the program in which mediators will serve and the applicability of relevant legal issues in specific case types.
  - B. **Impact of case type and status of the parties.** The training should cover how the case type (e.g., personal injury, commercial, family) as well as the status of the parties (as represented by counsel or self-represented) may affect the mediation process. Factors to

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consider include pre-mediation contact, mediator communication with parties and counsel, the timing and manner of information exchange, and the decision to caucus, among other considerations.

- C. **Ethical Standards.** The training should build further on the topics addressed in Section 2I, focusing on the context in which the trainees intend to mediate.
  - D. **Special considerations for specific case types.** The training should cover special considerations depending on the case type. For example, mediation training for divorce and custody and visitation cases should cover the emotional aspects of separation and divorce on adults and children, screening for appropriateness for mediation and safety, introduction to family systems and child development theory, age-appropriate parenting plans, parenting time and support obligations, parental decision-making, asset distribution, spousal support, and other relevant financial and legal issues. Other case types may have special considerations as well.
  - E. **Online Mediation.** The training should build further on the topics addressed in Section 2J, focusing on the context in which the trainees intend to mediate.
- IV. The training agenda and materials shall provide opportunities for trainees to practice mediation skills through subject-matter specific role plays, based on the types of cases trainees are likely to encounter as mediators on court rosters. Each trainee shall serve as a mediator for at least one role play, and as a disputant for at least one role play. Exercises and role plays should be introduced with specific instructions to guide participants, as well as guidelines for coaches, observers, and other participants. Each role-play should be observed and de-briefed to ensure adequate, constructive feedback is given to trainees.
- V. Post-training status:
- A. **Eligibility for Roster.** Trainees who complete 40 hours of approved mediation training and who have recent experience mediating actual cases are eligible to apply to serve on court rosters.<sup>i</sup> Final placement on any court roster is in the discretion of the local District Administrative Judge.<sup>ii</sup>
  - B. **Continuing Education in ADR under Part 146.5.** These workshops, courses, seminars, or training programs should be relevant to the mediator's area of practice. See Guidelines for Continuing Education under Part 146.5 of the Rules of the Chief Administrative Judge for more information.

**Mediator Certification:** The NYS Unified Court System does not certify mediators. Trainees may wish to obtain voluntary certification by contacting established membership organizations that certify the qualification of mediators who meet their requirements for training and experience.

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<sup>i</sup> Mediators may be required to have additional mediation training or relevant subject matter expertise before being considered for placement on certain court rosters. See Part 146.6[b].

<sup>ii</sup> See Part 146.3